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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,372	09/03/2003	Katarina Magnusson	SG 03233	4196

7590 01/12/2007  
JAMES RAY & ASSOCIATES  
2640 PITCAIRN ROAD  
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EXAMINER
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AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 9, 2006 has been entered.

### ***Response to Amendments***

2. Amendments to claims 6 have been entered in the above-identified application. **Claims 1-9 are pending of which 6-9 are under consideration.**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snow (US 4,363,841).

Snow discloses a laminated packaging material comprising an outermost layer of polyester or polypropylene (***corresponding to the thermoformable base layer of the claimed invention***), a metallic foil layer of aluminum (***corresponding to the barrier layer of the claimed invention***) and an innermost layer of a heat sealable polyolefin such as LLDPE (***corresponding to the laminate layer of the claimed invention***) (Column 2, lines 12-55). Once the laminate material is formed, the containers may be folded and heat sealed (Column 3, lines 12-32).

Snow does not teach that the polypropylene base layer is filled.

However, it would have been obvious to add filler to any of the polymeric layers in the laminate taught by Snow given that the addition of filler decrease the cost of the laminate by decreasing the amount of the polymer. With regards to the process limitations of claim 8, the Examiner would like to remind the Applicants that the determination of patentability for product claims containing process limitations is based on the product itself and not on the method of production. If the product is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) and also see MPEP 2113. In this case, the product (i.e., the laminate) is the same despite the process limitations of heat-treating with moist heat at a pressure greater than atmospheric pressure. All limitations of the claimed invention are disclosed in the above reference.

***Response to Arguments***

4. Applicant's arguments filed on November 9, 2006 have been fully considered but they are not persuasive. Applicants traverse the rejection of claims 6-9 under 35 U.S.C. 103(a) as being unpatentable over Snow (US 4,363,841) and submit that the purpose of the addition of the filler according to the present invention is to enhance rigidity of the polyester layer and not to reduce cost. In response the Examiner would like to point out that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Hence, the above rejection is maintained.


***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Mondays -Thursdays from 9:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sheeba Ahmed  
Art Unit 1773  
January 7, 2007